In the Supreme Court of the United States.

THE UNITED STATES, APPELLANTS,
v.
ALONZO J. VAN DUZEE. } No. 604.

APPEAL FROM COURT OF CLAIMS.

BRIEF OF APPELLANTS.

STATEMENT OF CASE.

This action was originally brought in the Court of Claims by the appellee, clerk of the circuit court of the United States for the northern district of Iowa, to recover fees for filing certain papers deposited in his office by commissioners of the circuit court of the United States for said district, under the nineteenth section of the act of May 28, 1896 (29 Stats. L., 184). Upon the trial of the case it appeared, and the court found as a fact, that the appellee actually filed and entered 9,930 separate and distinct records and other official papers appertaining to the office of commissioners of the circuit court deposited in his office as aforesaid. The nature and character of said records and other official papers are set forth in detail in the findings of fact. The trial court rendered judgment against the United States for the full amount claimed.

It appears, however, in the opinion that the court did not pass upon the question as to whether or not the clerk was required or authorized to file the dockets and papers so deposited in his office, or whether or not he was entitled to any compensation under the law for receiving and becoming the custodian of the same, but said judgment was rendered against the appellants on the grounds that they had rested content with the decision of the district court for the northern district of Florida in the case of *Marsh* v. *United States* (88 Fed. Rep., 879, 890, item 57), in which judgment was rendered against the appellants for like services (35 C. Cls. R., 214). The court seems to have understood that the appellants had failed to appeal from the decision in the Marsh case.

Judgment was rendered in the case at bar on the 26th day of February, 1900. On the 10th day of March following, the appellants filed a motion in the Court of Claims, asking that the judgment be vacated and a new trial granted, on the grounds that as a matter of fact an appeal had been taken in the case of Marsh above referred to. This motion was allowed to rest until the final decision of the circuit court of appeals in the Marsh case was rendered. This decision being adverse to the appellants and not being appealable, the Court of Claims was asked to pass upon the motion aforesaid, which it did March 3, 1902, overruling the same, and thereupon the judgment rendered February 26, 1900, was made final.

ASSIGNMENT OF ERROR.

The Court of Claims erred:

1. In rendering judgment in favor of the appellee and against the appellants on the findings of fact stated.

ARGUMENT.

The act of May 28, 1896 (29 Stat. L., 184, paragraph 19), provides:

> That the terms of office of said commissioners of the circuit courts heretofore appointed shall expire on the 30th day of June, 1897; and such office shall on that day cease to exist, and said commissioners shall then deposit all the records and other official papers appertaining to their offices in the office of the clerk of the circuit court by which they were appointed. All proceedings pending, returnable, unexecuted, or unfinished at said date before any such commissioner shall be continued and disposed of according to law by such commissioner appointed as herein provided as may be designated by the district court for that purpose.

Under the foregoing provisions of law the commissioners in the appellee's district deposited in his office their dockets and other official papers appertaining to all the cases completed and finally disposed of before said commissioners up to June 30, 1897. All official papers in cases on that day pending or unfinished were of course retained by the commissioner, to be turned over to such United States commissioner as the district

court might designate. It is therefore perfectly clear that all the papers involved in this case referred to what may be called "dead" cases. They constituted a mass of accumulated dockets and other official papers which, under the law and practice in force prior to the 30th of June, 1897, were not required to be sent to the clerk's office for filing or for any other reason. The appellee filed and entered each paper separately. It is our contention that he was not authorized or justified in filing any of the papers so deposited in his office, and that he is not entitled to any fee or compensation whatever for filing the same or for receiving and becoming the custodian or depositary thereof.

When the Congress abolished the office of circuit court commissioner it no doubt became apparent that the dockets, records, and official papers of said commissioners were in a fair way to be lost or destroyed, and inasmuch as they might possess some value historically or for reference purposes, it very wisely provided for their preservation by requiring them to be deposited in the office of the clerk where the record of the appointment of such commissioner was. These papers were not needed to complete the files of the court in the cases to which they referred, most of which, if not all, had been long before finally and forever disposed of. They were ordered deposited in the clerk's office evidently because it was the most appropriate place for them and because they could be safely stored there. There is certainly nothing in the law or in reason requiring them to be filed. So far as the clerk had any-

thing to do with them in his official capacity he was merely a depositary. The use of the word "deposit" in the act forbids the idea that the clerk should receive any compensation. The use of the word in this connection means nothing more than that the clerk's office should become for the papers of the outgoing commissioners a depository and place of storage, where they should remain for safe-keeping, to be found if any of them should ever be wanted. Where the relationship of depositary is created by contract, it is an essential characteristic of the contract that the keeping shall be gratuitous. It follows, from the definition of the word, that the depositary is not entitled to compensation for his services. (Am. and Eng. Ency. of Law, vol. 9, p. 285, new ed.)

When the relationship of depositary is created by law the implication is that the depositary shall act without compensation. Therefore, unless there is some express provision in the statute compensating the clerks of the court for receiving and disposing of the papers deposited in their offices under the provisions of the act above quoted, such services, if they can be properly called services, must be performed without compensation. Congress has not seen fit to provide any fee for depositaries in general, nor has it provided any fee for the clerk for receiving, caring for, or otherwise disposing of the papers deposited under the provisions of the act in question. Fees are of exclusive statutory origin. Mr. Justice Jackson, delivering the

opinion of the court in the case of *United States* v. *Shields* (153 U. S., 88, 91), said:

> Fees allowed to public officers are matters of strict law, depending upon the very provisions of the statute. They are not open to equitable construction by the courts, nor to any discretionary action on the part of the officers.

It will no doubt be urged in behalf of the appellee that he did not charge for being the depositary of these books and papers, but for filing the same, and that there is an express provision of the statute providing a fee for filing papers. This argument simply takes us back to where we began. There is nothing in law, the rules of the court, or in reason, requiring said papers and dockets to be filed. They could be of no earthly use to the court in the administration of justice, or the clerk in the performance of his duties. He simply took it upon himself to file them, and it is submitted that he did so without any authority whatever.

It is claimed for him, however, that he was authorized, if not required, to file said papers by a written rule of the court, which rule is as follows:

> Commissioners' papers: Upon receipt by the clerk of the papers and transcript of proceedings before a commissioner wherein the party is held to appear at court, the same shall be properly filed and the same entered upon the docket. (Findings of fact.)

It is perfectly apparent that this rule is not applicable to the papers involved in this case. The rule was promulgated long before the act of May 28, 1896, was

adopted, and unquestionably referred to the current business of the circuit court commissioners. Under that rule the said commissioners did not send to the clerk, or, if they did, the clerk was not required to file, any papers whatever referring or relating to cases in which the defendants were discharged, and necessarily there would accumulate in the offices of said commissioners a variety of papers in connection with held cases, which were not sent up to be filed with the other papers and transcripts. It was the practice generally for commissioners to return either the originals or a copy of the warrant of arrest and warrant of commitment to the clerk along with the transcript of proceedings, as required by section 1014, Revised Statutes. All other papers, such as the complaints, the subpœnas, temporary bonds, mittimuses, etc., were retained by the commissioners. Papers of this class are the very papers which the appellee is now claiming the rule of court above quoted required him to file when deposited in his office as aforesaid.

Such a construction changes the whole scope of the rule adopted by the court. The plain and simple requirement of the rule is that the clerk shall file all papers sent in to his office by the commissioners in the regular course of business in "held" cases. The construction contended for by appellee would require an additional clause something like this: "And in the event that the Congress, in its wisdom, shall hereafter abolish the office of circuit court commissioner and require the records and other official papers appertaining to

their offices to be deposited in the office of the clerk, the same shall be filed and entered by the clerk without reference to whether they refer to held or discharged cases and without regard to whether or not the law contemplated by Congress requires them to be filed." This would reduce the rule to an absurdity, and yet it is nothing more than the construction given it by the appellee.

The statement in the fourth finding of fact (Rec., p. 3), to the effect that the services claimed for in this case were performed in compliance with the rule of court, is a mere legal conclusion, and an erroneous one, too. The statement in the third finding of fact, that the services claimed for consisted of filing papers "deposited by the commissioners under the act of May 28, 1896," makes it absolutely certain that said papers could not have been sent to the clerk's office in compliance with the said rule or the settled practice of the court.

It does not follow, because the appellee was put to some trouble, inconvenience, or labor on account of the papers deposited in his office, as aforesaid, that he must be compensated therefor. (*United States* v. *Patterson*, 150 U. S., 65, 69.)

Section 1764, Revised Statutes, prohibits any allowance or compensation being made for any extra services whatever unless expressly authorized by law. Even if it were conceded that the appellee was required to perform extra service on account of the dockets and other papers deposited with him or in his

office, as aforesaid, it certainly can not be said that any fee or compensation has been expressly provided therefor.

To sum up, it is our contention in this case that no fee or compensation whatever is provided for the clerk for being or acting as depositary of the books and papers deposited in his office under the provisions of said section 19, of the act of May 28, 1896, nor is he required to do anything to or with the papers and dockets so deposited in his office which can by analogy or assimilation entitle him to the fee allowed by section 828, Revised Statutes, for filing papers. It is therefore clear that the Court of Claims erred in rendering judgment in favor of the appellee and against the appellants on the facts found, and in refusing to vacate said judgment and dismiss the petition upon a new trial.

PHILIP M. ASHFORD,
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No. 604.

Br. of Lancaster

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BRIEF FOR APPELLEE.

CHARLES C. LANCASTER,
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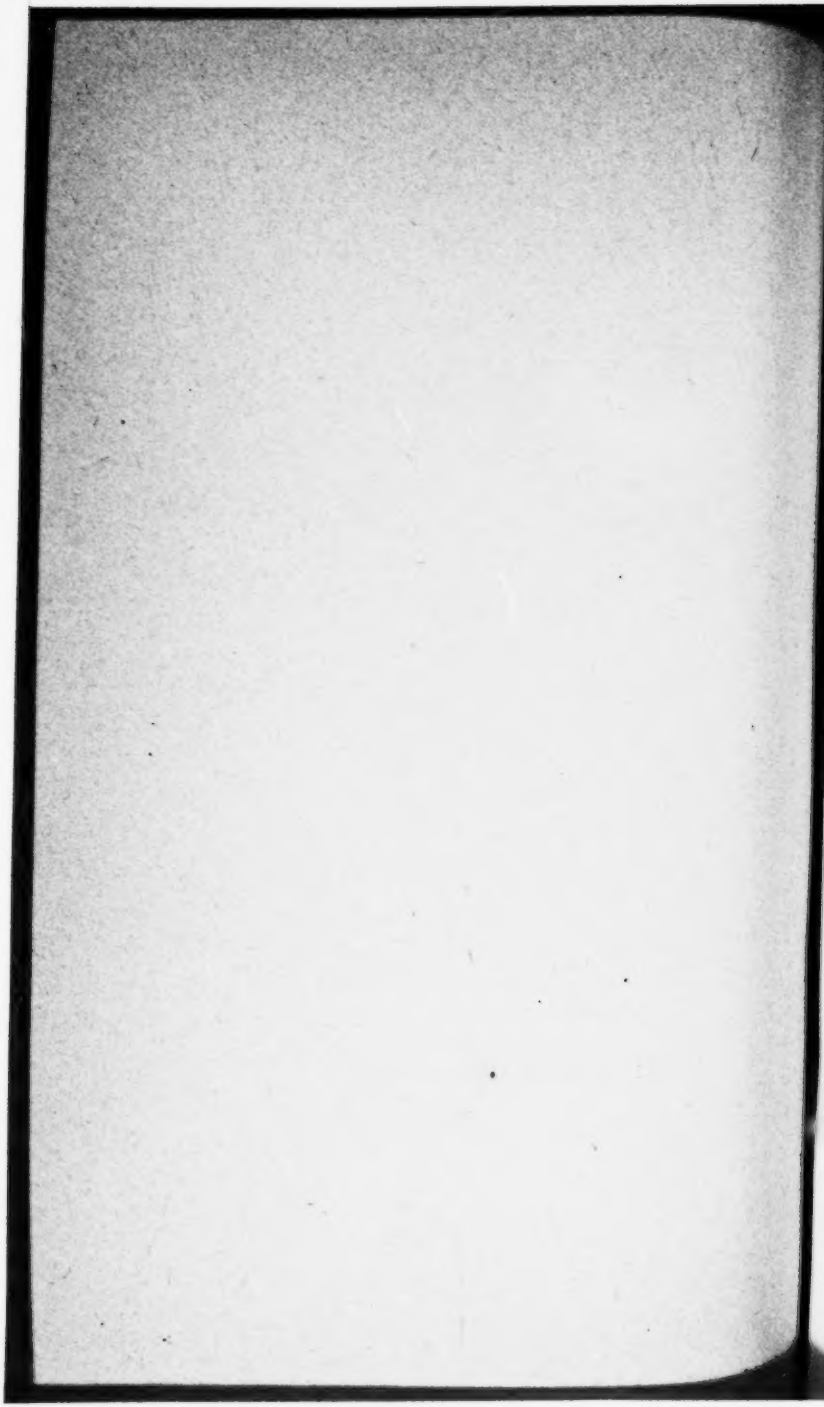

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BRIEF FOR APPELLEE.

STATEMENT OF FACTS.

The record shows that the appellee was clerk of the Circuit Court of the United States for the Northern District of Iowa, at Dubuque, from August, 1882, to December 31, 1897.

From July 1, 1897, to September 30, 1897, said clerk filed and entered 9,930 separate and distinct records and other official papers appertaining to the offices of the commissioners of the circuit court of the United States for the northern district of Iowa, which were deposited by said commissioners, under the act of May 28, 1896, in the office of the clerk of the circuit court for said district, for which he charged 10 cents each.

The clerk made up an account, including the said services and charges, which was duly verified and presented to the United States court for approval in the presence of the district attorney, and an order approving the same as being just and according to law was entered of record. Said account was then presented to the accounting officers of the Treasury Department for payment, but payment for the services here claimed was refused.

The record further shows that the said services were performed in compliance with the practice and rule of court.

ARGUMENT.

These records and official papers were deposited by the commissioners in the clerk's office as required by section 19 of the act of May 28, 1896 (29 Stats., 184), which provides:

"That the terms of office of all commissioners of the circuit courts heretofore appointed shall expire on the thirtieth day of June, eighteen hundred and ninety-seven; and such office shall on that day cease to exist, and said commissioners shall then deposit all the records and other official papers appertaining to their offices in the office of the clerk of the circuit court by which they were appointed. All proceedings pending, unexecuted, or unfinished at said date before any such commissioner shall be continued and disposed of according to law by such commissioner, appointed as herein provided, as may be designated by the district court for that purpose."

This law is mandatory on all the outgoing commissioners to deposit *all* the records and other official papers appertaining to their offices in the office of the clerk of the circuit court.

The manifest object and intention of the law was to *preserve* these records and official papers and not to destroy them. It is further evident and reasonable that it was not the intention of the law-makers that these records and official papers were simply to be dumped into the clerk's office and thrown around as waste paper. Such an assumption would destroy the wisdom of the legislation and defeat the clearly expressed intention of the act itself—that is, to *preserve* the records and official papers, which were the property of the United States, from destruction and for future use. It seems clear that the law intended that these records and official papers, when deposited in the clerk's office, should become a part of the records and files of the court. Otherwise, they would have been left with the outgoing commissioners for their private use.

It will be observed that the law required the outgoing commissioners to deposit *all* their records and official papers appertaining to their office, and the third finding of the court

below shows that all the papers deposited were of that character. Now, what was the duty of the clerk in the premises? Undoubtedly, to file and keep a record of each separate record and paper for future use and preservation as the property of the United States. That such was the correct interpretation of the law and its requirement is shown by the fact that after the clerk had performed this service at much labor and expense, he charged in his quarterly account the fees authorized by the third clause of section 828, Rev. Stats., "For filing and entering every declaration, plea, or other paper, ten cents," and the said account was presented to the court for approval in the presence of the district attorney, and, without objection either by the judge or the district attorney, an order was made and entered that the services were just and according to law. (R., Finding II.)

This court has held in the Jones case (134 U. S., 483), that the approval of court "is *prima facie* evidence of the correctness of the items of that account, and, in the absence of clear and unequivocal proof of mistake on the part of the court, it should be conclusive." The court below found that no mistake had been made; and in further proof that the law has been properly interpreted, the clerk of the circuit court for the northern district of Florida brought suit in the district court of the United States for similar services, and, in a lucid opinion, that court entered judgment for the claimant, from which the Attorney General appealed to the circuit court of appeals, and the judgment was affirmed. (Marsh *vs.* U. S., 88 Fed. Rep., 890, item 57; U. S. *vs.* Marsh, 106 Fed. Rep., 483.)

The record shows in the fourth finding of fact that when the aforesaid services were performed it was the settled practice, under the verbal orders of the court, for the clerk to file all papers sent up by the commissioners in said district; and by a written rule of court it was made the duty of the clerk in cases wherein the commissioner held the defendant to appear at court to file the papers and transcripts sent up by

commissioners. The court below found that "the aforesaid services were performed in compliance with said practice and rule of court."

A similar question was decided in the Van Duzee case, 140 U. S., 169, par. 1, and this Court said:

"The accounting officers of the Treasury in this case seemed to assume either that the clerk should select certain papers and file those only, or should fasten them together and file the bundle as one paper. The clerk, however, is not responsible for the manner in which such papers are transmitted by the commissioner, nor is it his duty to select out the complaint, the recognizance, or any other particular paper, and say that that only should be filed. Because the statute allows the fee 'for filing and entering,' it does not necessarily follow that before he is entitled to the fee he must enter every paper that he files upon his court docket; he may make the entry upon any proper book kept for the purpose. His duty is discharged by filing them as they are received, and exception to this charge therefor is accordingly overruled."

The binding effect of this practice and rule of the circuit court upon the clerk is pointedly set forth by this court in the Van Duzee case, *supra*, par. 10, in these words:

"When the clerk performs a service in obedience to an order of the court, he is as much entitled to compensation as if he were able to put his finger upon a particular clause of a statute authorizing compensation for such services."

The same principle is sustained in—

U. S. *vs.* Taylor, 147 U. S., 697, par. 5.
U. S. *vs.* Kurtz, 164 U. S., 53, par. 4.
U. S. *vs.* Dundy, 76 Fed. Rep., 357.

It is, therefore, submitted that no error is shown in the record, and the appeal should be dismissed.

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Counsel for Appellee.